

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 15, 2006

STATE OF TENNESSEE v. WANDA BOOKER

Direct Appeal from the Circuit Court for Maury County
No. 15263 Jim T. Hamilton, Judge

No. M2005-02788-CCA-R3-CD - Filed November 21, 2006

The State appeals the trial court's suppression of the evidence seized from the defendant's home pursuant to a search warrant. We conclude that the deficiencies in the confidential informant's basis of knowledge and proof of veracity were cured by independent police corroboration. We reverse the trial court's suppression of evidence and remand for trial.

Tenn R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed and Remanded

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which ALAN E. GLENN, J., and J. S. (STEVE) DANIEL, SR. J., joined.

Paul G. Summers, Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; T. Michel Bottoms, District Attorney General, for the appellant, State of Tennessee.

Claudia S. Jack, District Public Defender, and Robin Farber, Assistant Public Defender, for the appellee, Wanda Booker.

OPINION

On April 10, 2004, Officer Chris Bishop of the Columbia Police Department Narcotics and Vice Unit obtained a search warrant for the home of the defendant. The warrant stated that Officer Bishop, as the affiant, had

within the past 96 hours received information from a cooperating individual, herein referred to as C.I. that a black female known to the C.I. as Wanda was selling crack cocaine from her residence located at 1809 Locust Dr. Officers with the Columbia Police Department's Narcotics Division did place and (sic) electronic listening device on this C.I. as well as check this C.I. for any illegal narcotics, (to wit none were found). And did provide this C.I. with monies and did send this C.I. over to 1809 Locust Dr[.] Where the C.I. was involved in a narcotics transaction, in which the C.I. did purchase a quantity of crack cocaine from the black female known as Wanda.

The transaction was captured via the electronic listening device placed on the C.I. by officers. The C.I., was meet (sic) at a pre-determined location where the C.I. did surrender a quantity of crack cocaine to this affiant that was purchased from Wanda. The crack cocaine was field tested and did field test positive for cocaine base.

The Columbia Police Department executed the warrant on April 13, 2004, and seized .5 grams of cocaine and .4 grams of marijuana from inside the defendant's home. The defendant was charged with possession of .5 grams or more of cocaine with intent to sell (a Class B felony) and possession of marijuana (a Class A misdemeanor). The defendant filed a motion to suppress all evidence seized from her home pursuant to the search. The trial court agreed with the defendant's argument that the search warrant failed to state any facts which would have provided the magistrate a basis in which to determine the inherent credibility of the confidential informant and suppressed the evidence seized. The State timely appealed.

Analysis

The State contends the trial court erred in suppressing the evidence because the search warrant did not require a statement as to the informant's reliability due to the affiant's (Officer Bishop) independent basis of knowledge. The defendant, on the other hand, contends that the search warrant's affidavit failed to contain facts to satisfy the two-pronged test of the confidential informant's basis of knowledge and credibility of the informant.

A trial court's factual findings on a motion to suppress are conclusive on appeal unless the evidence preponderates against them. However, the application of law to the facts is a question of law requiring a de novo review on appeal. State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996); State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997). A search warrant shall issue only on the basis of an affidavit sworn to before a neutral and detached magistrate and which establishes probable cause. State v. Jacumin, 778 S.W.2d 430, 341 (Tenn. 1989); T.C.A. § 40-6-103, -104; Tenn. R. Crim. P. 41. The magistrate's determination is entitled to "great deference" on appeal. Jacumin, 778 S.W.2d at 431-32.

When probable cause for issuance of a search warrant is based upon information from a confidential informant, the two-pronged test adopted in Jacumin must be satisfied. The affidavit must establish that: (1) the informant possesses a "basis of knowledge" concerning the reported events; and (2) the veracity or reliability of the information must be established. Id. at 432. Independent police corroboration can supply the deficiencies for either prong. Id. at 436. Unlike an informant, an officer's veracity may be presumed by the magistrate. State v. Moon, 841 S.W.2d 336, 338 n.1 (Tenn. Crim. App. 1992).

We conclude from our reading of the affidavit that the deficiencies in the confidential informant's basis of knowledge and veracity were cured by independent police corroboration. After being advised by the informant of the defendant's involvement in selling crack cocaine from her residence, the officers arranged a controlled purchase. The informant was searched to insure that

the informant did not possess controlled substances. The officers provided purchase money and placed an electronic transmitter on the informant. The purchase was monitored auditorily by officers. The informant then delivered the substance purchased and officers conducted a field test which indicated positive for a cocaine base. The personal involvement and observations by the officers provided sufficient corroborative support for both the informant's basis of knowledge and veracity. This court in State v. Powell, 53 S.W.3d 258 (Tenn. Crim. App. 2000), concluded that independent police corroboration provided sufficient support of the two-pronged analysis based on a virtually identical factual situation.

Accordingly, the suppression of the evidence seized as a result of the search is reversed. The case is remanded for trial.

JOHN EVERETT WILLIAMS, JUDGE